90-1160

Supreme Court, U.S.
FILED
DEC 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

October, 1990 term

In the Matter of the Estate of
Peter Evonuk

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Norman R. Evonuk's
Petition for Writ of Certiorari

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Petitioner Pro Se

Question Presented for Review

Whether Petitioner's case is one involving infringement of his "equal civil rights," as defined by 28 U.S.C. § 1443.

List of Parties

The parties to this case are the following:

Norman Evonuk, Susan Shekell, Julia Lowery, Margaret Lay, the Estate of Eugene Evonuk, the Estate of Mary Evonuk, Edward Evonuk, Ray Evonuk, Carol Sullivan, Paula Greif, Christine Ledgerwood, Stephen Evonuk, Philip Evonuk, Marian Rich, Hugh Evonuk, and Tom Evonuk.

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28 U.S.C. § 1447(d) 5, 14

Previous Opinions

This matter began with Petitioner's Petition for Removal, filed in the United States District Court for the District of Oregon. That court, on February 26, 1990, recommended that the case be remanded to state court (findings of Magistrate Hogan). Subsequently, by order entered April 5, 1990, the District Court, per Judge Marsh, adopted the findings of the magistrate and ordered the remand.

Petitioner appealed to the Ninth Circuit Court of Appeals, which, on July 31, 1990, dismissed the appeal for lack of jurisdiction. Petitioner then requested a rehearing. On October 1, 1990, that request was denied.

Basis for Jurisdiction

The denial of a rehearing was entered October 1, 1990. Jurisdiction is proper pursuant to 28 U.S.C. § 1254 (1988).

Statutes at Issue

28 U.S.C. § 1447(d) states:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

28 U.S.C. § 1443 states:

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the grounds that it would be inconsistent with such law."

Statement of Facts

Petitioner's Petition for Removal states in relevant part:

"II

"In a countdown of causes emanating from actions in attempts to unlawfully close the Estate of Peter Evonuk, the latest arises with the actual distribution of certain assets in accordance with instructions from the Bench during a hearing on Motion to Show Cause . . . Counsel for the Plaintiffs was directed to 'make up what documents you think is necessary for Mr. Evonuk to comply with his duties in determining the value of the trust, the necessary letters that you think should be done and the documents.' . . . .

"Subsequently, petititioner under duress and in the presence of eyewitnesses, signed a Stipulated Order . . .

"Whereas the signature on the original copy was obtained under circumstances which deprived petitioner of freedom to excercise his free will to fulfill his fiduciary duties as constructive trustee to withhold passing title to certain assets of the total 'Evonuk Estate' until a matter of alleged criminality in the Lane County Circuit Court was settled; and whereas he believes that any contract or deed transferring title to property consummated through trickery or fraud compounded by threat of imprisonment is not in accordance with the laws of the United States, petitioner pe-

titions for removal of this MATTER to this court's jurisdiction and stay further transfer of assets until a true ruling is made after finding of facts.

"III

"Action pertaining to the interpretation of the Will of Peter festered to a head after May, 1980, with the death of Walter, appointed Executor of the Estate. According to the Will of Peter, Norman was designated to be successor.

"Norman studied the Will. It confirmed his belief that the Will of Peter had been broken with the approval of the court. Suffice to say - at that point, Mother took charge - she would equalize distribution with her Will.

"After Mother died in 1983, petitioner and Mother's Personal Representative tried to rectify the errors as summarized in Exhibit D, page 9, line 8 through page 11. The efforts were fruitless.

"In a nutshell, the single fact that an unapproved and illegitimate AGREEMENT AMONG DEVISEES AND BENEFICIARIES OF THE WILL OF PETER EVONUK made on the 31st day of August, 1977 . . . diabolically camouflaged under colors of law, and incorporated into the Decree of Distribution . . . as a lawful AGREEMENT AMONG HEIRS to effect breaking the Will of Peter Evonuk is enough as a Cause of Removal.

"IV

"At this stage of countdown for removal, a cause arises from an inaction or malfunction to complete the inventory for probating the Estate. The particulars are defined in Exhibit D, page 2, lines 8-20, page 5, lines 6-10, page 8, lines 6-26. A petition for intevenor might be in order.

"This court could possibly assume original jurisdiction even prior to the death of Peter Evonuk. The parcel involved is alleged by petitioner, that at the time of purchase, to have been public land the title to which vested in 'We the People of the United States.' Peter Ewoniuk's (sic) equity fraudulently passed through a chain of title to a subdivision of the State as part of the Willamette River Greenway. To the limit of his knowledge, the State of Oregon had never been granted a patent for that land.

"Whereas, a federal question is involved, petitioner prays this court give instruction for ascertaining the true cash value invested in that title in order to complete probate of the Will.

"V

"The heart of this petition is the interpretation of the Will of Peter Evonuk. By inadvertence or design the intention of his testament was never allowed a formal hearing. Now comes Peter Evonuk with a copy of his Will Modified by Codicil (Exhibit G) to be heard under jurisdiction of this Court.

"Peter does not come alone. He comes as Father of his family and is accompanied by his wife Mary, as Mother. At the time of his death, Dad was the patriarch in the fields and orchards, and Mother, the matriarch in the flower beds and living quarters of their estate. Their hereditaments were both severally held and jointly owned.

"By such terminology in the Will as:

> '. . . unto my said wife if she survives me.'
> 'In the event my said wife fails to survive me, . . .'
> 'In the event my said wife survives me, ...'
> 'Upon the death of my said wife, ..."
> '. . . upon the death of the survivor of my said wife and myself, . . .'
> '. . . without first obtaining the consent of my said wife, . . .'
> '. . . the order of death of my self and my said wife, . . .'

it is assumed they had mutual understanding of the final disposition of that portion of the estate they jointly owned.

"After bequeathing his interest in the 'household goods and furnishings in our home' through Article III, he constructed his Will to assure that his said Wife shall retain possession of the home place as if she were absolute owner for life after which title shall pass to designated heirs.

"What is the interpretation of the Will in its entirety?

"With indulgence of the court, petitioner elaborates on this point.

"Based on common law, petitioner argues that the ruling legal document of a testator's Will, taking effect the minute he dies, is that published instrument to which he set his hand in the presence of subscribing witnesses.

"On the 9th day of April, 1976, Peter Evonuk signed each of ten (10) pages of an Instrument composed of ten (X) Articles declared to be his Last Will and Testament.

"On the 20th day of November, 1976, he updated his Will. He drafted a Codicil to declare he changed his mind in respect to his bequests of of the home place on the McKenzie.

"Two sections of the Codicil delineate the extent and limitation to which his Will was modified:

"I. By this section he altered, changed and modified his said Will in three particulars.

"1. He changed Article IV by substituting language which named four of six children or their issues as devisees of the home place in the event he was predeceased by his said wife. [Emphasis added.]

"2. He amended Subsection B of Article V to read as follows:

> 'Upon the death of my said wife, the trustee shall divide and distribute the then remaining trust estate among my children in accordance with the division and distribution set forth in the preceding Article IV, as if I had been predeceased by my said wife.' [Emphasis added.]

"3. To Article VI he added a subsection M, thereby assuring that the trustee could not misconstrue his intention in respect to the preceding Articles.

"II. By Section II, except as modified above, he confirmed and ratified his Will in every other respect.

"In light of those facts, petitioner alleges that the directives of the Will of Peter Evonuk mean what they say.

"VI

"Notwithstanding the above-stated facts, the Estate of Peter Evonuk was closed by an unlawful Decree of Distribution which consequently established a contrived Peter Evonuk Trust which title purportedly vested in certain beneficiaries upon the death of his said wife.

"After years of efforts to rectify the errors, the said Trust was distributed by an allegedly invalid Stipulated Order. Attached to this Petition are three (3) Exhibits as supplemental aids to manifest the accounting of his Estate as of November 27, 1989:

"Exhibit H. Proposed incomplete distribution of the Peter Evonuk Estate after Special Bequests.

"Exhibit I. Distribution of the assets shown in both Numeric and Graphic Representations of the Peter Evonuk Estate according to orders of the court.

"Exhibit J. Financial Statement of the Peter Evonuk Trust as of November 27, 1989 termination."

Petitioner has also alleged that he was a "ward of the state" and "was not given the due process of law that is normally given to citizens who are free." (Response to Order of May 30, 1990, page 1).

Basis for Jurisdiction in the District Court

Jurisdiction was proper pursuant to 28 U.S.C. § 1443, 28 U.S.C. § 1446, 28 U.S.C. § 1331, 28 U.S.C. § 1340, and Article VI section 3, and the Fifth Amendment to the United States Constitution.

Reasons for Allowing the Writ

This case has one issue: Whether the Ninth Circuit Court of Appeals had jurisdiction to consider an appeal from the District Court's remand order. According to the Ninth Circuit, jurisdiction is barred by virtue of 28 U.S.C § 1447(d). That statute states:

> "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

Unfortunately, the Ninth Circuit appears to have ignored that portion of the statute which creates jurisdiction whenever removal occurs "pursuant to section 1443 of this title." That section gives jurisdiction over cases involving a violation of a person's "equal civil rights."

It is precisely this kind of violation that Petitioner has alleged. According to

Petitioner, he was a "'ward of the state,'" and he "was not given the due process of law that is normally given to citizens who are free." (Response to Order of May 30, 1990, page 1). Petitioner's petition for removal further alleges 1) that he was coerced into signing a stipulated order (page 3, lines 15-17); 2) that the estate of his father was distributed pursuant to an illegitimate agreement (page 4, lines 14-15); 3) that certain land was transferred fraudulently (page 5, line 5); and 4) that the decree of distribution was unlawful (page 8, lines 2-6). Lastly, and perhaps most importantly, Petitioner has alleged that "All of the events prior to signing the [Stipulated] Order occurred while [he] was a 'ward of the state,' and it was partly as a result of this status that they took place." (Response to Order of May 30).

The effect of the Ninth Circuit's ruling is to limit what kinds of "equal

civil rights" are redressable by 28 U.S.C. § 1443. But the statute has no such limits. It is important, therefore, for this Court to take review of this case and make clear that the statute applies to all civil rights violations. Only then will the intent of Congress be effected.

Norman R. Evonuk
Petitioner Pro Se

Appendix

On October 1, 1990, the United States Court of Appeals for the Ninth Circuit entered an Order in the case of Peter Evonuk, Petitioner, and Norman R. Evonuk, Petitioner-Appellant, v. State of Oregon, Respondent-Appellee, No. 90-35357, stating:

> "The motion for reconsideration and suggestion for rehearing en banc are denied."

On July 31, 1990, the United States Court of Appeals for the Ninth Circuit entered an Order in the case of Peter Evonuk, Petitioner, and Norman R. Evonuk, Petitioner-Appellant, v. State of Oregon, Respondent-Appellee, No. 90-35357, stating:

> "On May 30, 1990, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. After reviewing appellant's response and the record, it is apparent that this appeal is from a district court's order remanding a case based on its lack of jurisdiction. Therefore, this court lacks jurisdiction over the appeal. See 28 U.S.C. § 1447(d). Accordingly, this appeal is dismissed."

On May 30, 1990, the United States Court of Appeals for the Ninth Circuit entered an Order in the case of Peter Evonuk, Petitioner, and Norman R. Evonuk, Petitioner-Appellant, v. State of Oregon, Respondent-Appellee, No. 90-35357, stating:

> "The Civil Appeals Docketing Statement indicates this appeal is taken from a remand order. It therefore appears there is no jurisdiction for the appeal. See 28 U.S.C. § 1447(d).
>
> "Within 14 days of the entry of this order, appellant shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, appellee may respond within 10 days after service of appellant's memorandum.
>
> "If appellant does not comply with this order, the appeal will be dismissed by the Clerk under Ninth Circuit Rule 42-1."

On April 6, 1990, the United States District Court for the District of Oregon entered an Order in the case of In the Matter of the Estate of Peter Evonuk, Deceased, Civil No. 90-6080-E, stating:

"Magistrate Hogan filed his Findings and Recommendation on February 26, 1990. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

"Plaintiff has filed timely objections. I have, therefore, given the file in this case a de novo review.

"I find no error. Accordingly, I ADOPT the Findings and Recommendation #4 of Magistrate Hogan and this action is remanded to Lane County Circuit Court as this court is without jurisdiction based upon improper removal under 28 U.S.C. § 1446.

"IT IS SO ORDERED."

On February 26, 1990, the United States District Court for the District of Oregon entered an Order in the case of In the Matter of the Estate of Peter Evonuk, Deceased, Civil No. 90-6080-E, stating:

"Norman Evonuk filed a petition

for removal of Lane County Circuit Court Case # 23416 entitled In the Matter of the Estate of Peter Evonuk, Deceased. Mr. Evonuk attached copies of several papers in that case which were in his hands more than 30 days before his petition for removal was filed.

"The caption on his petition reads 'Norman Evonuk, Plaintiff v. State of Oregon, Defendant'.

"A civil action may be removed by a defendant within 30 days of receipt by defendant of the initial pleading. 28 U.S.C. 1446 (b).

"This court lacks jurisdiction. The action should be remanded to Lane County Circuit Court."